

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

Georgia-Pacific Corporation

Employer

and

John E. Rains

Case 26-RD-1044

An Individual

and

Teamsters Local 667

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, /1 the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. /2
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. /3
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

INCLUDED: All truck drivers and warehousemen.

EXCLUDED: All other employees, office, clerical employees, salesmen, guards, and supervisors, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Teamsters, Local 667.

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before July 19, 2001.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by July 26, 2001.

DATED July 12, 2001, at Memphis, TN.

/s/ Ronald K. Hooks
Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

1/ The Union has filed a brief which has been duly considered.

2/ The parties stipulated that the Employer is engaged in commerce and is within the jurisdiction of the National Labor Relation Act and the Union is a labor organization as defined by the Act.

3/ The Union was certified as the exclusive collective-bargaining representative of the unit found appropriate herein in Case 26-RC-4218 on May 11, 1972, pursuant to a stipulated election agreement. The petition in this case was filed on June 11, 2001 by John E. Rains, an Individual. Copies were served on the Employer and the Union on June 12, 2001.

The Employer and Union currently are parties to a Collective-Bargaining Agreement, which took effect September 1, 1997. The Agreement is set to expire on August 31, 2003, a period of six (6) years. The Union has taken the position this petition was untimely filed because it was filed in the fourth year of the Agreement, instead of the sixty (60) to ninety (90) day window period prior to the third anniversary of the contract.

In *General Cable Corp.*, 139 NLRB 1123, 1125 (1962) the Board stated its contract bar policy. A contract will only serve as a bar to a stranger petition for a period of three (3) years. Therefore a contract which is longer than three (3) years will be treated for purposes of contract bar, as a three (3) year contract. A petition can then be filed within the ninety (90) to sixty (60) day open period prior to the third anniversary of the agreement. A petition can also be filed after the third year anniversary of the contract, unless a new agreement is reached during the sixty (60) day insulated period prior to the third anniversary of the contract.

In *Shen-Valley Meat Products, Inc.*, 261 NLRB 958 (1982), a petition was filed a month after the third anniversary of a five (5) year collective bargaining agreement between the

Employer and Intervenor. The Employer asserted the agreement served as a bar to the petition. The Board found the petition would have been timely filed after the third year anniversary but for an amendment to the original agreement between the Employer and Intervenor executed prior to the filing of the petition which reaffirmed or extended the term of their original agreement. This amendment contains provisions that were organized according to the original agreement, including recognition, working hours and conditions, and vacations. The amendment also stated it took effect in the second year of the agreement and was to be effective until the end of the original contract. The Board found that this amendment expressly reaffirmed the parties' intent to be bound by the agreement for a specific period.

The record fails to show that a new agreement between the Employer and the Union has been reached. Instead, the Union has stated that the current contract is still in effect and it is the agreement by which the parties are currently adjusting grievances. Therefore because the petition was filed during the fourth year of the contract, it is not untimely and it is not barred by the agreement.

To show the contract has been affirmed the Union in their brief point to the evidence presented that the parties agree to the existence of the contract and have asserted rights within the contract. This does not support an affirmation of the agreement. In *Shen Valley Meat Packers*, the parties signed an amendment, which expressly stated the intent to remain bound by the remaining terms of the agreement. Also see *Sante Fe Transportation*, 139 NLRB 1513 (1962) and *Southwestern Portland Cement Company*, 126 NLRB 931 (1960). In both of these cases, amendments to the collective bargaining agreement were executed which showed the express intent by the Employer and Labor Organization to reaffirm and remain bound by the agreement.

In this case the Union has not presented any evidence of any amendment or agreement executed which expressly reaffirms the parties' intent to be bound by the current agreement.

The Union asserts this petition is not timely because it was filed in the fourth year of the agreement as opposed to the sixty (60) to ninety (90) day window period prior to the third year anniversary of the contract. The law does not support this proposition. In ***General Dynamics Corp.***, 175 NLRB 1035 (1969) the Board found that a petition filed more than a month after the third year anniversary of the contract between the Employer and Intervenor was not barred by the contract. The Board reiterated its refusal in ***General Cable Corp.***, supra, to extend the bar period beyond three (3) years citing the fear that the stability of industrial relations would be so heavily weighted against employee freedom of choice as to create an inequitable imbalance. The Union also cited ***Benjamin Franklin Paint***, 124 NLRB 54 (1959) to support this argument. Benjamin Franklin Paint deals with "whether the controlling date, for the purpose of determining the contract term and timeliness of the petition is the execution date or the effective date of the contract." Id., at 55. This case has no bearing on the issues related to this petition.

There are approximately 11 employees in the unit found appropriate herein.

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